

**STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW**

Christopher Johnson,

Appellant,

v.

Case No. 2013-WHB-08-0237

Ohio University,

Appellee,

ORDER

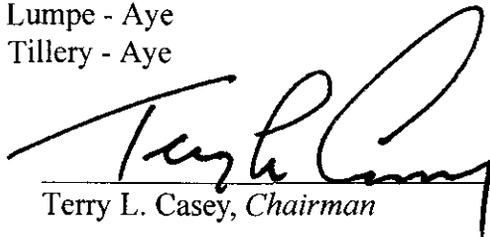
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the entirety of the record, including a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the Administrative Law Judge.

Wherefore, it is hereby **ORDERED** that Appellee's Motion to Dismiss is **GRANTED** and the instant appeal is **DISMISSED** based upon the Appellant's failure to prosecute his appeal pursuant to O.A.C. 124-11-07 (A) (2) and (C).



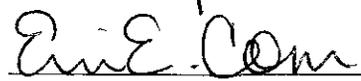
Casey - Aye
Lumpe - Aye
Tillery - Aye


Terry L. Casey, *Chairman*

CERTIFICATION

The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that this document and any attachment thereto constitutes ~~(the original)~~ a true copy of the original) order or resolution of the State Personnel Board of Review as entered upon the Board's Journal, a copy of which has been forwarded to the parties this date, July 17, 2014.


Clerk

NOTE: Please see the reverse side of this Order or the attachment to this Order for information regarding your appeal rights.

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Christopher Johnson

Case No. 2013-WHB-08-0237

Appellant

v.

May 30, 2014

Ohio University

Christopher R. Young

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This matter comes on for consideration due to the Appellant's filing of an appeal, alleging that he received a two-day suspension from the Appellee, Ohio University, in retaliation for being a whistleblower. This matter was set down for a status conference which was held on January 8, 2014 at 10:00 a.m., which was set for record hearing on May 2, 2014, which was continued due to the Appellee's filing of a Motion to Dismiss on or about April 3, 2014.

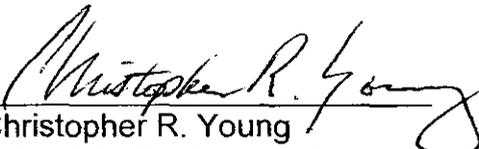
Appellee's Motion to Dismiss contained an accompanying Memorandum in Support, along with the Affidavit of Andrew Powers, the Chief of Police at the Ohio University Police Department. On April 15, 2014, Appellant filed an Unopposed Request to Extend Time to Response to Appellee's Motion to Dismiss, and on May 2, 2014 Appellant Filed an Additional Request for Extension of Time to Response to Appellee's Motion, which was granted on May 5, 2014, stating among other things that the Appellant had to file its response on or before May 27, 2014. Appellant was provided the requisite timeframe in which to respond to Appellee's motion to dismiss, but, to date, he has not done so.

O.A.C. 124-11-07 (A) (2) and (C) combine to require an opposing party to file a memorandum *contra* to properly filed and support of motion to dismiss within 10 days of service of the motion to dismiss. Appellant has not complied with these filing requirements.

Further, it appears that Appellee's motion to dismiss has merit. This is because it appears that the Appellant in this case cannot be classified as a whistleblower for reporting activity when reporting such activity would fall under one of his normal job duties, as previously held in a similar case of *Haddox v. Ohio State Atty. Gen.*, 2008 Ohio 4355 (10th Dist. 2008).

To summarize, Appellant has not complied with the filing requirements set forth in O.A.C. 124-11-07 (A) (2) and (C). More importantly, it also appears that this Board would lack jurisdiction to consider the merits of the Appellant's whistleblower appeal, as well. Thus, his appeal should be dismissed.

Therefore, I respectfully **RECOMMEND** that this Board **GRANT** Appellee's Motion to Dismiss and **DISMISS** the instant appeal based upon the Appellant's failure to prosecute his appeal pursuant to O.A.C. 124-11-07 (A) (2) and (C).


Christopher R. Young
Administrative Law Judge